

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LISA MYERS

Plaintiff,

v.

LIBERTY LIFE ASSURANCE COMPANY

Defendant.

:
:
:
:
:
:
:
:
:

CIVIL ACTION

NO. 99-1077

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
VERDICT AND FINAL JUDGMENT**

Reed, S.J.

May 20, 2002

This action arises out of the decision of defendant Liberty Life Assurance Company (“Liberty”) to deny long term disability benefits sought by plaintiff Lisa Myers (“Myers”). Plaintiff seeks to recover the denied benefits under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”). I conducted a non-jury civil trial on May 6, 2002. Defendant did not move this Court to admit defense exhibits into evidence at trial. Rather, on May 7, 2002, the parties submitted to my Chambers a stipulation of counsel offering defense exhibits 4, 10, 21, 23, 29, 30, 32, 38, 39, and 41, which this Court now accepts into evidence. This Court also restates for the record that it read the deposition testimonies moved into evidence in their entirety and admits those portions of the testimonies which are relevant according to this Court’s Order of May 2, 2002 wherein this Court established the law of the case regarding relevancy. (Document No. 41). Having conducted this non-jury trial, and based upon the pleadings, the exhibits, the stipulations, the deposition testimony, and the arguments of counsel, this Court now makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT¹

1. Upon reading the deposition testimony of Shawn Smith in the context of the entire evidentiary record in this case, the Court finds Mr. Smith to be a credible witness, and credits most of his testimony as an accurate description of the events in question.
2. Upon reading the deposition testimony of Cynthia Romanovich in the context of the entire evidentiary record in this case, the Court finds Ms. Romanovich to be a credible witness, and credits most of her testimony as an accurate description of the events in question.
3. Both Mr. Smith and especially Ms. Romanovich have a tremendous amount of experience in the insurance field. (Dep. of Shawn Smith at 9-17 (“Smith Dep.”); Dep. of Cindy Romanovich at 11-48) (“Romanovich Dep.”).
4. Liberty administers the Group Disability Income Policy Plan (“the Plan”) for Advanta Corporation (“Advanta”). (Group Disability Income Policy Plan, Pl.’s Ex. 2.)
5. While the plan is administered by the same entity that determines eligibility, the evidence fails to show any correlation between claim handling and profitability. There is no indication that administrators of the plan receive any personal gains from denying disability claims. There is simply no proof that this dual role translated into any bias or in any way impacted how claims were handled. (Smith Dep. at 31-32, 40; Romanivich Dep. at 62, 66-69, 71-72.)
6. Under the Plan, “disabled” is defined as a covered person being “unable to perform all of the material and substantial duties of his occupation on an Active Employment basis

¹ To the extent that these findings of fact include conclusions of law or mixed findings of fact and conclusions of law, these findings and conclusions are hereby adopted by this Court.

- because of an Injury or Sickness.” (Id. at § 2 ¶ 1.)
7. The Plan does not specifically define the term “material and substantial duties.”
 8. The Plan provides that: “Liberty shall possess the authority, in its sole discretion, to construe the terms of this policy and to determine benefit eligibility hereunder. Liberty’s decisions regarding construction of the terms of this policy and benefit eligibility shall be conclusive and binding.” (Id. at § 7.)
 9. The Plan requires that the applicant provide proof of claim to Liberty. (Id.)
 10. Lisa Myers was employed by Advanta as a customer acquisition representative.
(Stipulated Facts, at ¶ 1) (“Stipulation”).
 11. On May 30, 1996, plaintiff claims that she suffered a work related injury to her right arm.
(Stipulation, at ¶ 3.)
 12. Plaintiff was absent from work for approximately four days following the incident. She then returned to work until approximately ten months later when on April 4, 1997 when she stopped working entirely. (Report of J. Dr. Howard Levin at 1-2, May 2, 1997, Def.’s Ex. 4 (“Levin Report”); Short Term Disability Claim Form, May 5, 1997, Pl.’s Ex. 1.)
 13. Plaintiff’s treating physician is Dr. Paul Schneidman, M.D. (Stipulation, at ¶ 7.)
 14. On July 23, 1997, based on a report submitted by Dr. Schneidman, Liberty approved Myers for short term disability (“STD”) benefits. (Stipulation, at ¶ 6; Smith Dep. at 65-66.)
 15. In the report, Dr. Schneidman diagnosed Myers as having Reflex Sympathetic Dystrophy (“RSD”)² in her right arm which had spread to her right face, right trunk and right leg,

² RSD is also known as Complex Regional Pain Syndrome (“CRPS”).

and which was caused by a blunt trauma to her lateral upper arm. He indicated that her physical impairments were severe and that she was incapable of even minimum activity. He indicated that her mental and nervous impairment required that she engage only in limited stressful situations and limited interpersonal relations. (Attending Physician Statement, Dr. Schneidman, May 14, 1997, Pl.'s Ex. 5.)

16. Dr. Schneidman's office notes dated December 8, 1996, (from an office visit of December 4, 1996), indicate that Myers has "features" of RSD. He observed no discoloration and noted no bladder problems. (Clinic Visit Notes, December 8, 1996, Pl.'s Ex. 19.)
17. After approving Myers for STD benefits, she applied for long term disability ("LTD") benefits, and Liberty received the following additional medical reports:
 - a. Dr. J. Howard Levin, who saw plaintiff for a neurological evaluation and independent medical examination ("IME") in conjunction with plaintiff's workmen's compensation claim, examined plaintiff, reviewed her medical reports and wrote a report dated May 2, 1997. (Levin Report, *supra*.)
 - b. Dr. A. Lee Osterman, who saw plaintiff upon a referral from Dr. Schneidman, examined plaintiff and wrote a report dated April 23, 1997. (Report of Dr. A. Lee Osterman, April 23, 1997, Def.'s Ex. 21) ("Osterman Report").
 - c. Dr. Steven Mandel, who saw plaintiff upon a referral from Dr. Schneidman, examined plaintiff and wrote a report dated July 21, 1997. (Report of Dr. Mandel at 3, July 21, 1997, Def.'s Ex. 23) ("Mandel Report").(Smith Dep. at 65-66.)
18. The Liberty file also contained a joint report from Dr. Mitchell J.M. Cohen and Dr.

Lynette Menefee dated January 31, 1997. (Comprehensive Behavioral Pain Medicine Evaluation, Dr. Mitchell J.M. Cohen and Dr. Lynette Menefee, January 31, 1997, Pl.'s Ex. 20) ("Cohen and Menefee Joint Report").

19. Numerous doctors found that there were no objective physical or neurological evidence supporting Dr. Schneidman's diagnosis of RSD/CRPS and that Myers had unexplained pain. These doctors could not explain the connection between the May 30 incident and plaintiff's discomfort. Some doctors noted that inconsistencies existed with respect to plaintiff's complaints of pain. (Levin Report at 15-16 and 6, 9-10 (citing records from Dr. Raphael, August 13, 1996 and November 5, 1996, Dr. Schneidman, December 4, 1996 and the Key Functional Assessment); Osterman Report at 5; Mandel Report at 3; Cohen and Menefee Joint Report at 4.)
20. Numerous doctors recommended psychological treatment which apparently was not pursued. (Levin Report at 13 (citing records from Dr. Frank, February 6, 1997); Osterman Report at 5; Cohen and Menefee Joint Report at 4.)
21. Numerous doctors diagnosed Myers as having borderline right carpal tunnel syndrome, which could not account for plaintiff's asserted complaints. (Osterman Report at 5; Mandel Report at 3.)
22. Dr. Levin opined that Myers was "embellishing" her symptoms and concluded that:

"Based on my evaluation of Ms. Lisa Myers, I feel that she is fully recovered from any injuries she may have sustained as a result of the work related incident which occurred on May 30, 1996. . . . There is no objective evidence which would even remotely account for the nature, duration, and array of complaints that this patient has developed. . . . I see absolutely no reason why Ms. Myers should not be able to return to work on a full-time

basis without any restrictions.” (Levin Report at 15-16.)

23. In or around August, 1997, Dr. Schneidman filled out a second report for Liberty which contained substantially identical information as in his report for the claim for STD benefits. The only inference this Court can draw from these reports is that Dr. Schneidman clearly accepts all of plaintiff’s complaints and her reported necessary restrictions. (Physical Capacities Form, August 11, 1997 and Attending Physician Statement, received August 19, 1997, Pl.’s Ex. 17.)
24. It appears that on or about September 2, 1997, Myers’ job description may have become part of her case file at Liberty. The job description does not include a substantive description of the physical requirements of a Customer Acquisition Representative. There is no indication that the job description was considered in Liberty’s initial denial of benefits. It is not always necessary for Liberty to inquire into specific job duties in evaluating a claim. (Smith Dep. at 61; Advanta Mortgage Job Description, September 2, 1997, Pl.’s Ex. 24, Def.’s Ex. 39.)
25. On September 2, 1997, Lisa Jellerson, a Disability Claims Analyst for Liberty, wrote a letter to Myers, explaining that Liberty had determined that plaintiff did not meet the definition of disability under the Plan and would not be entitled to LTD benefits under the Plan. (Letter from Lisa Jellerson to plaintiff, September 2, 1997, Pl.’s Ex. 7) (“Jellerson letter”).
26. The Jellerson letter included the following findings in support of Liberty’s denial of LTD benefits:
 - a. “The medical information obtained cannot support any objective findings through your multiple examinations and diagnostic testing. There is no objective evidence

which would account for the nature, duration, and array of complaints that you have developed.” (Id. at 1.)

- b. The battery of tests performed were all within normal limits or negative. (Id.)
- c. The Center for Aquatic Rehabilitation reported no objective physical or neurological findings on its reassessment. (Id.)
- d. The multiple tests performed by Dr. Mandel, including, *inter alia*, an EMG and Peroneal motor responses, were normal. The results from these examinations fail to adequately explain plaintiff’s symptoms. (Id. at 1-2.)
- e. Dr. Levin’s IME report noted concern that Dr. Schneidman was embellishing his patient’s injuries and that plaintiff may also be embellishing her symptoms. Dr. Levin also reported that the results of Key Functional Assessment Test indicated a manipulated effort by plaintiff. He reviewed all the reports and found them to be within the normal range and concluded that: ““Ms. Myers is not suffering from any ongoing physical or neurological impairments.”” (Id. at 2.)
- f. Dr. Raphael’s report indicated inconsistent reports of pain during his exam. (Id.)
- g. Dr. Frank recommended psychotherapy before any other therapies were tried. (Id.)
- h. Dr. Osterman’s report noted that he had reviewed multiple reports, including, *inter alia*, MRIs and Radiographs, and that they were all normal. He concluded that the physical findings, in terms of objective measurements, could not substantiate full blown RSD. He in fact found that there was no evidence of RSD and found plaintiff’s complaints to have an emotional basis. (Id. at 2-3.)
- i. Jellerson concluded that: “To date all medical documentation contained in your

file does not support your disability of ‘Reflex Sympathetic Dystrophy.’” (Id. at 3.)

27. Liberty’s internal documents are consistent with Jellerson’s explanation for the denial of benefits. (System One Claim Notes, Claim Note 2, September 2, 1997, Pl.’s Ex. 11; Record of Conversation by Lisa Jellerson, September 3, 1997, Pl.’s Ex. 10; Appeals Referral Sheet, November 4, 1997, Def.’s Ex. 29.)
28. Smith, who was Jellerson’s supervisor, did not specifically recall Myers’ case file; however, it was standard procedure for him to review the entire file before Jellerson’s letter would be mailed to plaintiff. Specifically, he would review the argument presented by the case manager and check the policy provisions to ensure that the argument fit with the policy provisions. (Smith Dep. at 51-54, 62-63.)
29. Smith’s deposition testimony regarding the reasons why Liberty initially denies benefits is completely consistent with the explanations provided in the file.
30. Liberty’s decision to deny LTD benefits to Myers was based on the findings in the reports obtained from Dr. Levin, as well as the doctors to whom Dr. Schneidman referred plaintiff. Liberty concluded that these reports indicated that the medical evidence did not substantiate Myers’ claim that she was disabled. (Smith Dep. at 61, 65-68.)
31. The only possible inference drawn from this conclusion is that without a documented diagnosis, Myers would have no limitations in the workplace. Thus, research into Myers’ specific job duties was not necessary.
32. The language in Jellerson’s letter that no objective evidence existed may have been slightly exaggerated given Dr. Schneidman’s lone diagnosis. At the same time, the overwhelming weight of the evidence indicated that no objective examinations or tests

supported Dr. Schneiderman's RSD diagnosis and plaintiff's inconsistent complaints of pain.

33. In Jellerson's letter, she informed Myers of her right to appeal the decision, and by letter dated October 27, 1997, Myers' attorney Kenneth S. Saffren ("Saffren") advised Liberty that the denial was being appealed. (Jellerson Letter; Letter from Kenneth S. Saffren, Esquire to Jellerson, October 27, 1997, Pl.'s Ex. 8.)
34. On November 5, 1997, Susan W. Colinet ("Colinet"), a Quality Review Analyst, informed Saffren by letter that in normal circumstances he would be notified of a final decision within 60 days from the request of the review and in special circumstances, he would be notified within 120 days. (Letter from Susan W. Colinet to Kenneth S. Saffren, Esquire, November 5, 1997, Pl.'s Ex. 9.)
35. On January 15, 1998, Colinet sent a letter to Saffren informing him that the request for reconsideration of Myers' claim for LTD benefits was denied because as provided in the Jellerson letter, the "medical information on file from numerous doctors indicates there is a lack of objective medical documentation to support the diagnosis, prognosis, and restrictions and limitations given by Dr. Schneiderman. Extensive testing including MRI, EMG, X-Rays, and nerve conduction studies resulted in either normal or borderline results." (Letter from Colinet to Saffren, January 15, 1998, Pl.'s Ex. 13.)
36. Prior to sending the letter, on January 6, 1998, Colinet submitted a Claims Referral Sheet to Sue LaPierre which recommended that the denial be upheld. Reviewing the Claims Referral Sheet and the January 15 letter, it is apparent that additional reasons for the claim denial are provided in the internal Claims Referral Sheet. For instance, Colinet does not include in the letter the fact that Myers' job is sedentary or that a psychological

- explanation is suggested in the doctor reports. (Claims Referral Sheet, January 6, 1998, Pl.'s Ex. 12.)
37. What is more crucial, however, is the fact that Colinet's explanation does not deviate in any material way from the reasons Jellerson supplied to Myers. Both Colinet and Jellerson explain in a consistent manner that Myers is being denied LTD benefits because numerous doctors found no evidence of a disability.
38. January 15, 1998 falls within 120 days, but not within 60 days, from November 5, 1997. As argued by counsel for the defendant, because the case file included multiple doctor reports, the appeal fell into the special circumstances category. Therefore the appeal was timely.
39. On February 27, 1998, Myers requested reconsideration of the denial. (Stipulation, at ¶ 11.)
40. The only additional documentation submitted by plaintiff was the deposition of Dr. Schneidman. (Dep. of Cindy Romanovich at 120 ("Romanovich Dep."); Letter from Saffren to Colinet, February 27, 1998, Def.'s Ex. 37.)
41. Dr. Schneidman testified in a substantially consistent manner with his previous reports concerning Myers. Portions of his testimony, however, were contradictory. For example, in reviewing his notes from a physical examination of Myers, Dr. Schneidman testified that Myers had severe hypersensitivity to light touch throughout the entire right upper extremity and at the same time, testified that plaintiff had diminished sensation in the same distribution. These two findings are simply antithetical to one another. (Dep. at 13.)
42. Dr. Schneidman conceded that the etiology of CRPS is unknown and the current medical

- understanding of the disease is at a 1898 level. (Dep. at 23-24.)
43. Dr. Schneidman testified that Myers had minimum swelling in her hand which was not impressive. In contrast to his December 1996 report, he testified that she had some bluish discoloration. He found her deep skin pain her most impressive symptom and noted that such pain cannot be seen. (Dep. at 47-48.)
44. Dr. Schneidman testified that it was hard to say whether Myers was embellishing her symptoms, and that in his view, there was no obvious embellishment. However, Dr. Schneidman acknowledged that there was a possibility that she was making up her symptoms. (Dep. at 51, 69.)
45. As observed by numerous other doctors, Dr. Schneidman testified that the trauma Myers experienced in May, 1996 and her symptoms were not related to any “known physiology.” (Dep. at 52.)
46. Dr. Schneidman reported two objective pieces of medical information to support his diagnosis. First, plaintiff had cutaneous blood flow abnormalities in her feet. Second, she had a neurogenic bladder, a finding upon which he placed great weight. However, his earlier report specifically noted that Myers had no bladder problems. (Dep. at 62.)
47. Dr. Schneidman conceded that his diagnosis was based primarily on Myers’ subjective complaints of pain. (Dep. at 64, 65.)
48. Cindy Romanovich (“Romanovich”) handled the reconsideration. She decided to obtain a peer review from an independent vendor, Core, to ensure that Liberty was providing a full and fair review and because she had received a very technical deposition of Dr. Schneidman and felt a peer review may better clarify Liberty’s position. (Romanovich Dep. at 120, 122.)

49. On or about August 24, 1998, Anthony Bottini, M.D., completed the peer review and made the following findings:
- a. “[T]he available medical information does not support a specific diagnosis as an etiology for this patient’s continuing complaints.” (Core Peer Review Analysis at 1, Pl.’s Ex. 14.)
 - b. “In the absence of a diagnosis, restrictions and limitations are difficult to specify with any degree of certainty.” (Id.)
 - c. “I would recommend that this patient be restricted from occupational activities which require repetitive use of her right hand or arm such as keyboard work, repetitive phone dialing, prolonged writing, etc. She should also be proscribed from lifting greater than 25 pounds overhead or work which requires crawling, stooping or pushing. The patient appears to be capable of sedentary work with the appropriate restrictions regarding her right upper extremity.” (Id. at 1-2.)
 - d. “I am also struck by the lack of abnormalities on objective testing.” (Id. at 2.)
 - e. Dr. Bottini recommended that Myers return to “productive functional activities.” (Id. at 3.)
50. Myers is left handed, which is significant given that her complaints of pain affect only her right side. (Levin Report at 1.)
51. On October 7, 1998, Romanovich contacted Wendy Yacko, (“Yacko”) who worked in Human Relations at Advanta to learn the precise job requirements of Myers’ position as a Customer Acquisition Representative. (Memorandum letter from Romanovich to Yacko, October 7, 1998, Def.’s Ex. 38.)
52. On October 9, 1998, Romanovich received a voice mail message from Yacko in which

Yacko stated that the information entered for each call involved typing the customer's address, market value of their home, existing mortgage balances, then enter four codes comprising one or two digits. Employees in this position must push function keys to get from screen to screen but the work is not repetitive in the sense that the position does not require constant data entry. When there is a disconnection from a call, there is a small wait before the next incoming call. There is no phone dialing. They take inbound calls and the outbound calls are accomplished through an automated system. They do have to transfer calls. There is no lifting, overhead work, crawling, stooping, pushing or prolonged writing. (Phone Record, October 9, 1997, Def.'s Ex. 41.)

53. On October 9, 1998, Romanovich sent a letter to Saffren informing him that the denial of LTD benefits was being upheld for the following reasons:
- a. The entire file, including the additional material supplied from Dr. Schneidman was reviewed. (Letter from Romanovich to Saffren, October 9, 1998, Pl.'s Ex. 16.)
 - b. Dr. Bottini determined that the medical information failed to provide a specific diagnosis, that plaintiff's complaints were not consistent with either a neurological or orthopedic injury, and that the needed limitations and restrictions did not prevent plaintiff from performing sedentary work. (Id.)
 - c. The plaintiff's specific job requirements were compared with the restrictions and limitations identified by Dr. Bottini, and "the weight of the medical evidence in the claim file does not support an inability of Ms. Myers to perform all of the material and substantial duties of her occupation as a customer acquisition representative." (Id.)

54. October 9, 1998 falls 224 days after Myers' February 27, 1998 request for reconsideration. The normal review process at Liberty does not include a reconsideration. There is no evidence that Liberty promised to complete the reconsideration within a specific time frame. Thus, the date of the reconsideration decision is not significant. (Romanovich Dep. at 94.)
55. Romanovich's deposition testimony regarding the reasons why Liberty upheld its decision to deny benefits is completely consistent with the explanations provided in the file documents.
56. On March 19, 1999, Myers was awarded social security disability benefits. She was found to have become disabled April 7, 1997. Myers received benefits as a result of reconsideration of her claim. There was no hearing held before an administrative law judge. There is nothing in the record indicating the specific reasons Myers was awarded these benefits. (Social Security Administration, Retirement, Survivors and Disability Insurance, Important Information, March 19, 1999, Pl.'s Ex. 22.)
57. Liberty's position during the entire claim denial process is entirely consistent with the position Liberty took during the trial. Likewise, the core reasons for denying LTD benefits to Myers which Jellerson provided in her letter to Myers, which Smith gave at his deposition, which Colinet provided in her letter to Myers, and which Romanovich gave at her deposition and by letter to Myers are entirely consistent with each other.
58. The conclusion of Liberty represents one logical result which reasonable claim professionals could have reached based upon the evidence in their files at the various stages of their review. There is no evidence showing any overreaching or biased claim review or activity by Liberty claims personnel.

II. CONCLUSIONS OF LAW³

1. This action arises under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”), and the parties hereto are bound by the terms of ERISA.
2. The appropriate standard of review for a denial of benefits when an ERISA defendant both funds and administers a plan and has been assigned the discretion to determine liability, is the heightened arbitrary and capricious standard, or sliding scale approach. See Cimino v. Reliance Standard Life Ins. Co., No. Civ. A. 00-2088, 2001 WL 253791, at *3 (E.D. Pa. Mar. 12, 2001), aff’d, No. 01-1888, 2002 WL 538567 (3d Cir. Apr. 11, 2002) (unpublished) (citing Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 393 (3d Cir. 2000)). The review is ““deferential, but not absolutely deferential.”” Id. (quoting Pinto, 214 F.3d at 393).
3. This Court is directed to consider “the nature and degree of apparent conflicts” and shape its review accordingly; thus the lesser the evidence of conflict on the part of the administrator, the more deferential the standard becomes. Pinto, 214 F.3d at 393-94. See also Freiss v. Reliance Standard Life Ins. Co., 122 F. Supp.2d 566, 573 (E.D. Pa. 2000).
4. None of the problems reported in Pinto exist in this case. See Pinto, 214 F.3d at 393-94. There is no evidence that Liberty treated the same facts in an inconsistent manner. The record does not indicate that Liberty treated the same authority in an inconsistent manner in two separate instances. There is no indication that there was any disagreement among the administrators over how to handle Myers’ claim which could support the view that when at a crossroads, Liberty chose the decision more favorable to Liberty. Quite simply,

³ To the extent that these conclusions of law include findings of fact or mixed findings of fact and conclusions of law, these findings and conclusions are hereby adopted by this Court.

there is no evidence of bias beyond the fact that Liberty both funds and administers the Plan.

5. Thus, this Court applies a standard of review which is at the low end of the arbitrary and capricious “range,” and does not apply a high degree of skepticism.
6. A claimant bears the burden of proving that she qualifies for benefits under the Plan at issue here. See Mitchell v. Eastman Kodak Co., 113 F.3d 433, 439 (3d Cir. 1997) (determining burden under the terms of the Plan); Abnathya v. Hoffmann-La Roche, Inc., 2 F.3d 40, 46 (3d Cir. 1993) (same).
7. The language “unable to perform all of the material and substantial duties of his occupation” needs no specific definition in the Plan because it is clear and unambiguous. See Doe v. Provident Life and Accident Ins. Co., No. Civ. A. 96-3951, 1997 WL 214796, at *4 (E.D. Pa. Apr. 22 1997). This language contains neither legalese nor terms of art beyond the understanding of a reasonable policyholder. See id.
8. The decision to initially deny Myers LTD benefits, which was upheld on appeal, was based on the very reasonable determination that the weight of the medical evidence showed that Myers was not in fact disabled. A Plan administrator does not act improperly under ERISA when it chooses to rely on numerous doctor reports that blatantly disagree with the lone diagnosis of a treating physician who relies almost exclusively on subjective evidence to form the basis of his diagnosis of a disability.
9. The decision to deny Myers LTD benefits upon reconsideration was based on the very reasonable determination that the peer review doctor found that there existed no specific diagnosis and Romanovich determined that the restrictions and limitations did not prevent Myers from performing the material and substantial duties of her sedentary position.

10. Having found that Liberty acted in a very reasonable and consistent fashion, I conclude that the decision to deny LTD benefits to Myers did not violate the terms of the Plan, Liberty did not abuse its discretion, and Myers is not eligible for recovery under ERISA.

III. VERDICT

Having concluded that plaintiff Lisa Myers is not entitled to benefits under the terms of the Plan pursuant to ERISA, 29 U.S.C. § 1132 (a) (1) (B), and based on the foregoing findings and conclusions, my verdict is in favor of Liberty Life Assurance Company.

IV. JUDGMENT

It is hereby **ORDERED** that final **JUDGMENT** is entered in favor of Liberty Life Assurance Company and against Lisa Myers.

LOWELL A. REED, JR., S.J.